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4 *Attorneys for Plaintiff-Relators*

5
6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**
8

9 **UNITED STATES OF AMERICA** *ex*
10 *rel.* **IONM LLC**, a Delaware corporation
and *ex rel.* **JUSTIN**
11 **CHEONGSIATMOY, M.D.;**
STATE OF CALIFORNIA *ex rel.*
12 **IONM LLC**, a Delaware corporation and
ex rel. **JUSTIN CHEONGSIATMOY,**
13 **M.D.; LOS ANGELES COUNTY** *ex rel.*
IONM LLC, a Delaware corporation and
14 *ex rel.* **JUSTIN CHEONGSIATMOY,**
M.D.; and **JUSTIN**
15 **CHEONGSIATMOY, M.D.,** in his
individual capacity,

16 Plaintiffs,

17 v.

18 **UNIVERSITY OF SOUTHERN**
19 **CALIFORNIA**, a California
corporation;

20 and

21 **USC CARE MEDICAL GROUP,**
22 **INC.,** a California corporation,

23 Defendants
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Case No. 2:18-cv-08311-WLH (ASx)

Hon. Wesley L. Hsu

**OPPOSITION TO DEFENDANTS’
EX PARTE APPLICATION TO
COMPEL RELATORS;
DECLARATION OF ALICE CHANG**

Action Filed: September 26, 2018

Case Unsealed: December 28, 2021

Answer Filed: March 24, 2023

MEMORANDUM OF POINTS AND AUTHORITIES

Relators hereby oppose USC's Ex Parte Applications filed on September 1, 2023 based upon this Memorandum of Points and Authorities, the attached Declaration of Alice Chang, and pleadings, papers and records on file in this action.

On July 5, 2023, Judge Hsu ordered the Mandatory Settlement Conference with Magistrate Judge Alka Sagar and ordered the ADR Proceeding to be held no later than July 20, 2023 which the Judge Hsu then continued to September 28, 2023 in his Minute Order filed at Dkt. 245 stating that "Irrespective of Mr. Hardiman's availability, however, the Court finds that the requested continuance will allow Defendants the necessary time to make the settlement conference productive (Docket No. 239 at 5)."

Judge Sagar then granted Defendants an additional 2 month extension to September 15, 2023 to respond to settlement (Dkt. 247) during which time Defendants could have and should have filed a regularly scheduled motion and/or waited one more business day to meet and confer appropriately. Relators nonetheless emailed Defendants (copying counsel for all the government entities who are the real parties in interest for the government claims) the September 5, 2023 Itemized Statement of Damages Claimed with explanation of calculations and references to supporting documents, including but not limited to references to USC's claims data, USC's public admission that USC Care returned 6,843 IONM claims after this qui tam was filed (ECF 218 at 14), etc. (Chang Decl. ¶ 2, Exhibit A). The Court should therefore deny Defendants' September 1, 2023 Ex Parte Applications as moot.

Dated: September 5, 2023

Respectfully Submitted,

By: /s/ Alice Chang

ALICE CHANG

Attorneys for Plaintiff-Relators

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Case No. 2:18-cv-08311-WLH (ASx)

Hon. Wesley L. Hsu

**DECLARATION OF ALICE CHANG
IN SUPPORT OF OPPOSITION TO
DEFENDANTS' EX PARTE
APPLICATION TO VACATE THE
JULY 20, 2023 MANDATORY
SETTLEMENT CONFERENCE AND
EXTEND DEADLINE TO OCTOBER
1, 2023**

Action Filed: September 26, 2018

Case Unsealed: December 28, 2021

Answer Filed: March 24, 2023

DECLARATION OF ALICE CHANG

I, Alice Chang, declare as follows:

1. I represent the interests of all Plaintiff-Relators in this action. I make this Declaration of my own personal knowledge and, if called to testify as a witness, could and would competently testify to the matters stated herein.
2. On September 5, 2023, I emailed defense counsel, Mark Hardiman and Jonathan Radke (copying counsel for all the government entities who are the real parties in interest for the government claims) the September 5, 2023 Confidential Itemized Statement of Damages Claimed with explanations of calculations and references to supporting documents, including but not limited to references to USC's claims data, USC's public admission that USC Care returned 6,843 IONM claims after this qui tam was filed (ECF 218 at 14), etc. A true and correct copy of the email communication attaching the September 5, 2023 Confidential Itemized Statement of Damages Claimed attached hereto as **Exhibit A**.

I, Alice Chang, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 5th day of September 2023.

/s/ Alice Chang

Alice Chang

Exhibit A

From: **Alice Chang JDMBA** <alicechangjdmba@gmail.com>

Date: Tue, Sep 5, 2023 at 1:42 PM

Subject: Re: Defendants' EXA - see Relators' September 5, 2023 Confidential Itemized Statement of Damages Claimed attached

To: Mark Hardiman <mhardiman@nelsonhardiman.com>, Jonathan Radke <jradke@nelsonhardiman.com>

Cc: Kortum, Frank (USACAC) <frank.kortum@usdoj.gov>, martin.estrada_usdoj.gov <Martin.Estrada@usdoj.gov>, <Susan.Gilllin@oig.hhs.gov>, <A.Thomas.Morris@usdoj.gov>, Marc Beaart <mbeaart@da.lacounty.gov>, Steven Frankland <sgfrankl@da.lacounty.gov>, John Fisher <John.Fisher@doj.ca.gov>, Brian Frankel <Brian.Frankel@doj.ca.gov>, Neumeister, Mitch <mitch.neumeister@insurance.ca.gov>, <Nathaniel.Spencer-Mork@insurance.ca.gov>, Alice Chang JDMBA <alicechangjdmba@gmail.com>

Mark and Jonathan,

In response to Defendants' Friday, September 1, 2023 Ex Parte Applications which were filed on the eve of the Labor Day holiday this past weekend, please see attached the September 5, 2023 Confidential Itemized Statement of Damages Claimed and confidential excel worksheet also attached to this email.

The September 5, 2023 Confidential Itemized Statement of Damages Claimed voids the July 10, 2023 Itemized Statement of Damages, thereby rendering the subject of Defendants' September 1, 2023 Ex Parte Applications moot.

In response to Defendants' request to clarify calculations, the attached September 5, 2023 Confidential Itemized Statement of Damages Claimed is based upon USC's own claims data and upon USC's public admission that USC Care returned 6,843 IONM-related claims after this qui tam was filed. See ECF 218 at 4.

The September 5, 2023 Confidential Itemized Statement of Damages Claimed is also based upon civil monetary penalties provided by the Department of Justice through the Federal Register (see <https://www.federalregister.gov/documents/2023/01/30/2023-01704/civil-monetary-penalties-inflation-adjustments-for-2023>) and assesses a per claim penalty of \$20,263 (the midpoint between the maximum per claim penalty of \$27,018 and the minimum per claim penalty of \$13,508) for each the 6,843 IONM-related claims USC returned after this qui tam was filed.

Finally, the September 5, 2023 Confidential Itemized Statement of Damages Claimed also includes attorney fees and costs itemized by each attorney, paralegal, eDiscovery manager and/or class action clerk. See the bottom of this email for billing rates provided.

My reasonable attorney fees includes significant attorney time to-date on work product for the Government (see ECF 239 at 29) and my review of over 5,000+ IONM time-based SMD data files (documented by patient name) in order to identify the legal issues contained therein.

The SMD file is the most critical piece of IONM evidence and is the heart of this case. Each SMD file contains multiple hours-worth of IONM information from a single surgery. Only an attorney who has the specialized software required to open these files and who has taken the necessary time to analyze the time-based SMD is able to assess the legal issues contained therein.

The attorney hours I have spent to-date analyzing each and every one of the 5,000+ IONM SMD data files are reasonable because this legal assessment is required to determine whether USC's returns of IONM claims are fair, adequate, and reasonable.

Attorneys (Rates per hour)

1. Steve Hasagawa: \$925
2. Justin Berger: \$850
3. Sam Buffone: \$800
4. John Black: \$800
5. Eliot Rushovich: \$750
6. Matthew Helland: \$725
7. Sarvenaz Fahimi: \$675
8. Matthew Morgan: \$675
9. Anna Parkash: \$600
10. Rebekah Bailey: \$550
11. Lisa Watanabe-Peagler: \$550
12. Alice Chang: \$545
13. Kate Fisher: \$450
14. Michelle Kornblit: \$425
15. Matthew Frank: \$400
16. Chloe Raimey: \$375
17. Elissa Waizman: (Croce): \$350
18. Melanie Johnson: \$350

Paralegals / eDiscovery Managers / Class Action Clerks (Rates per hour)

1. Valerie Barretto: \$325
2. Daniel Curtis: \$275
3. Caitlin McDonough: \$275
4. Giuseppe Benedetti: \$275
5. Morgan Botelle: \$225
6. Kristine Nelson: \$195
7. Cameron Pylka: \$195
8. Heather O'Neil: \$195
9. Elizabeth Luebesmier: \$195
10. Chris Rued: \$195
11. Alex Smith: \$195
12. Angi Kittelson: \$195
13. Haley Thompson: \$195

Please set up a time for telephonic meet and confer should you have any questions or concerns.

Thank you,
Alice Chang

cc: Counsel for Governments